

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

DAVID J. SCOTT,

Plaintiff,

v.

GEORGE BABIK and GEORGE
BENNETT,

Defendants.

Case No. 2:04-CV-29

Hon. Richard Alan Enslen

ORDER

This matter is before the Court on Plaintiff David J. Scott's Motion to Alter Judgment under Federal Rule of Civil Procedure 59(e). The Court dismissed Plaintiff's Complaint in this action (without prejudice) because he failed to accurately list the prior lawsuits he had filed on his prisoner civil rights complaint form.

In his Motion to Alter Judgment, Plaintiff assails the Court's evaluation of the factual record; however, such facts were not central to the Court's Opinion and merely served as background. Plaintiff also suggests he is not a three-strikes litigant because the Sixth Circuit Court of Appeals' decision in *Thaddeus-X v. Blatter*, 175 F.3d 378 (6th Cir. 1999), proved that his retaliation claims filed before *Thaddeus-X* were not frivolous. While it may be true that if Plaintiff filed the same complaint after *Thaddeus-X* he would not have been assessed a strike, Plaintiff overlooks the fact that at the time he initiated these suits, he was incarcerated and the actions were dismissed as frivolous, malicious, or failed to state a claim. *See* 28 U.S.C. § 1915(g); *see also Scott v. Churchill*, No. 1:95-CV-571 (W.D. Mich. Aug. 31, 1995); *Scott v. Johnson*, No. 1:95-CV-403 (W.D. Mich.

Oct. 23, 1995); *Scott v. Norton*, No. 2:03-CV-66 (W.D. Mich. May 6, 2003). These strikes were properly assessed under the Prison Litigation Reform Act.

Finally, Plaintiff believes that the Court was aware of his prior lawsuit in *Scott v. Martin*, 2:02-CV-723 (E.D. Mich. Aug. 21, 2003) because he attached it as an exhibit to his Complaint. The Court has reviewed Plaintiff's Complaint and exhibits and *Scott v. Martin* is nowhere to be found.

THEREFORE, IT IS HEREBY ORDERED that Plaintiff David J. Scott's Motion to Alter Judgment (Dkt. No. 76) is **DENIED**.¹

DATED in Kalamazoo, MI:
April 18, 2006

/s/ Richard Alan Enslen
RICHARD ALAN ENSLEN
SENIOR UNITED STATES DISTRICT JUDGE

¹ The Court observes that Plaintiff's Motion is untimely and could be denied on that basis as well. FED. R. CIV. P. 59(e).